

52.225-2

quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under the contract for public use.

Foreign end product means an end product other than a domestic end product.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item (See 12.505(a)(1)).

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

(End of clause)

[64 FR 72433, Dec. 27, 1999, as amended at 66 FR 65350, Dec. 18, 2001; 67 FR 21536, Apr. 30, 2002; 68 FR 28086, May 22, 2003; 74 2722, Jan. 15, 2009]

52.225-2 Buy American Act Certificate.

As prescribed in 25.1101(a)(2), insert the following provision:

BUY AMERICAN ACT CERTIFICATE (FEB 2009)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product." The terms "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

(b) Foreign End Products:
Line Item No.: _____
Country of Origin: _____
(List as necessary)

48 CFR Ch. 1 (10-1-12 Edition)

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

[64 FR 72434, Dec. 27, 1999; 65 FR 4633, Jan. 31, 2000, as amended at 67 FR 21536, Apr. 30, 2002; 68 FR 28086, May 22, 2003; 74 FR 2723, Jan. 15, 2009]

52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

As prescribed in 25.1101(b)(1)(i), insert the following clause:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT (MAY 2012)

(a) *Definitions.* As used in this clause—

Bahrainian, Moroccan, Omani, or Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Morocco, Oman, or Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Morocco, Oman, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Commercially available off-the-shelf (COTS) item—(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and